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LEXJAX, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

FIELDS PAG, INC., FIELDS MOTORCARS OF FLORIDA, INC., and LEXJAX, INC., Plaintiffs, -against- CDK GLOBAL, LLC, as successor-in-interest to ADP DEALER SERVICES, INC., Defendant.	Civ. No. 16-01876 (MCA) (MAH) **FIRST AMENDED COMPLAINT**

Plaintiffs Fields PAG, Inc., Fields Motorcars of Florida, Inc., and LEXJAX, Inc., (collectively, the “Fields Auto Group”), by and through their undersigned counsel, allege as follows against CDK Global, LLC, as successor-in-interest to ADP Dealer Services, Inc. (“CDK”):

NATURE OF THE ACTION

1. This is an action for a declaratory judgment arising from the Fields Auto Group's utilization of CDK's software in automotive dealerships acquired by the Fields Auto Group on April 1, 2016. The Fields Auto Group requests this relief because CDK has claimed that the dealerships' former owner owes CDK allegedly outstanding amounts for the software. The Fields Auto Group has agreed to defend and indemnify the former owner in this regard. CDK's claim has placed a cloud on the Fields Auto Group's use of the software; threatened the Fields Auto Group's business and relationships with its customers and the former owner; and created a justiciable controversy between the Fields Auto Group and CDK.

2. This is also an action to recover damages resulting from CDK's misuse of the Fields Auto Group's data to improperly create revenue generating services for CDK.

3. This is also an action for specific performance. CDK has indicated that it intends to turn off integration with third-party software provided by Advent Resources, Inc. ("Advent"), which is being used in the Fields Auto Group's Florida dealerships. CDK's unilateral decision to turn off Advent integration will have devastating effects on the Fields Auto Group's business, as the Advent software is crucial to the dealerships' daily operations.

THE PARTIES

4. Plaintiff Fields PAG, Inc. ("Fields PAG") is a Florida corporation, with its principal place of business at 199 South Lake Destiny Drive, Orlando, Florida 32810.

5. Plaintiff Fields Motorcars of Florida, Inc. ("Fields Motorcars") is a Florida corporation, with its principal place of business at 963 Wymore Road, Winter Park, Florida 32789.

6. Plaintiff LEXJAX, Inc. ("LEXJAX") is a Florida corporation, with its principal place of business at 350 South Lake Destiny Drive, Orlando, Florida 32810.

7. CDK is a limited liability company organized under the laws of Delaware, with its place of business at 1950 Hassell Road, Hoffman Estates, Illinois 60169.

JURISDICTIONAL STATEMENT

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(a) and 2201(a).

9. This Court has personal jurisdiction over CDK for at least the following reasons: (i) CDK maintains, and/or maintained, its principal place of business in this District; (ii) CDK regularly does business or solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from products and/or services provided to companies in this District and in this state; and (iii) CDK has initiated litigation in this judicial District.

10. Venue is proper in this District because the parties agreed in the MSA (as defined below) that this Court is the exclusive forum for any action against CDK.

11. An immediate, real, and justiciable controversy exists between the Fields Auto Group and CDK as to whether there are allegedly outstanding amounts for the software.

FACTUAL BACKGROUND

A. Dealer Management Systems

12. A dealer management system ("DMS") is a computer system typically used by auto dealerships and large equipment manufacturers. A DMS product consists of hardware and software that support all aspects of running a dealership, including the sales, parts, service, financing, inventory, and administrative components.

13. In other words, a DMS product is responsible for performing all of the day-to-day transactions in a dealership from payroll and accounting to inventory and itemizing the costs of deals. A DMS is the lifeblood of a dealership.

B. The Parties

14. From their inception as a single Cadillac dealership in Illinois, the Fields Auto Group and its affiliates have grown to become one of North America's premier luxury auto dealership groups. Today, the Fields Auto Group and its affiliates serve customers in Florida, Illinois, Wisconsin, and North Carolina, and represent BMW, Mercedes-Benz, Maserati, Land Rover, Range Rover, Alfa Romeo, Volvo, Rolls-Royce Motorcars, Bentley, Lamborghini, Jaguar, Infiniti, MINI Cooper, Volkswagen, Jeep, Sprinter, FIAT, Ram, Chrysler, Dodge, and Cadillac.

15. Since 1971, the Fields Auto Group has been a family-owned and operated business. The commitment of the Fields Auto Group and its affiliates to building long term relationships is demonstrated by their growth from a single store to over 30 locations across the country.

16. CDK promotes itself as "the largest global provider of integrated information technology and digital marketing solutions to the automotive retail industry."

17. According to CDK, it provides "solutions to dealers in more than 100 countries around the world, serving more than 27,000 retail locations and most automotive manufacturers." CDK claims it is "the primary provider of DMS solutions to 7 out of the top 10 U.S. dealer groups."

18. Upon information and belief, CDK holds a 40 percent share of the DMS market in the United States.

C. Agreements Between CDK and the Fields Auto Group

19. On or about April 13, 2011, the Fields Auto Group executed a Master Services Agreement (the "2011 MSA"), pursuant to which CDK promised to provide DMS products and services at several dealership locations owned by, and affiliated with, the Fields Auto Group.[1]

20. On or about April 13, 2011, the Fields Auto Group also executed a Schedule to the 2011 MSA (the "2011 Schedule"), which provided the specific pricing for the DMS.

21. On or about April 19, 2011, the Fields Auto Group executed an Addendum to the 2011 MSA and the 2011 Schedule (the "2011 Addendum").

22. In the 2011 Addendum, CDK agreed [redacted]

23. Pursuant to the 2011 Addendum, CDK promised that [redacted] (Emphasis added.)

24. In other words, [redacted]

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[1] The Fields Auto Group has utilized CDK's DMS products and services well before entering into the 2011 MSA.

25. In the 2011 Addendum, CDK and the Fields Auto Group further agreed that [redacted] (Emphasis added.)

26. Thus, the 2011 Addendum [redacted]

[redacted]

28. Pursuant to the 2011 Addendum, CDK also agreed [redacted] (Emphasis added.)

29. In the 2011 Addendum, CDK also promised [redacted]

(Emphasis added.) CDK also promised that it [redacted] (Emphasis added.)

D. The Fields Auto Group's Purchase of the Brumos Auto Group

30. On or about December 9, 2015, the Fields Auto Group entered into certain asset purchase agreements (collectively, the "APA") to purchase the assets of a dealership group in Jacksonville, Florida (the "Brumos Auto Group") owned by Brumos Motor Cars, Inc. ("Brumos"). The Brumos Auto Group represents Lexus, Porsche, and Mercedes-Benz.

31. The Brumos transaction was scheduled to close on April 1, 2016, at which time Brumos would provide the Fields Auto Group with the purchased assets, and the Fields Auto Group would own and operate the specified dealership locations.

32. Years ago, on or about August 17, 2011, Brumos entered into its own Master Service Agreements with CDK (collectively, the "Brumos MSA"), pursuant to which CDK promised to provide DMS products and services at dealerships in the Brumos Auto Group.

33. As part of the Brumos transaction—and as expressly set forth in the APA—the Fields Auto Group agreed to assume the Brumos MSA, which is set to expire in or about April 2017. The APA, however, does not require the Fields Auto Group to pay CDK a specific monthly fee for keeping the DMS system and services currently being utilized at the dealership locations in the Brumos Auto Group.

E. The Brumos Schedule

34. In connection with the Brumos transaction—and the anticipated purchase and continued operation of the Brumos Auto Group (set to take place on April 1, 2016)—the Fields

Auto Group and CDK began discussing the transition of the DMS products and services currently being utilized in the Brumos dealerships.

35. CDK's initial proposal, however, contained [redacted]

36. When the Fields Auto Group raised this issue with CDK, CDK denied that the [redacted]

37. Despite CDK's denials, the Fields Auto Group [redacted]

38. As a result, CDK started to negotiate with the Fields Auto Group [redacted]

39. On March 25, 2016, after extensive discussions between the parties and exchanging of draft agreements, CDK sent new DMS agreements to the Fields Auto Group relating to the dealerships being purchased in the Brumos transaction (the "Brumos Schedule"). [redacted]

40. In fact, over the years, CDK and the Fields Auto Group have consistently entered into [redacted]

41. On March 26, 2016, the Fields Auto Group accepted the Brumos Schedule by executing them and returning the executed copies to CDK by email.

42. After the Fields Auto Group entered into the Brumos Schedule, and in light of the anticipated April 1, 2016 closing, CDK continued to transition the existing DMS in the Brumos dealerships for the Fields Auto Group's use and operation.

43. Indeed, without a DMS in place, the Fields Auto Group could not open for business, as the DMS supports all aspects of running the dealerships.

44. On April 1, 2016, the closing for the Brumos transaction took place and, as a result, the Fields Auto Group took over the existing DMS and started to operate the dealerships in the Brumos Auto Group.

F. CDK Seeks Amounts Allegedly Outstanding From Brumos

45. On or about March 21, 2016, in an obvious effort to apply pressure on Brumos, CDK (by its litigation counsel) informed Brumos that [redacted] CDK would accelerate all amounts due under the Brumos MSA and seek to recover those amounts directly from Brumos. CDK claims that Brumos will not have fulfilled its contract obligations under the Brumos MSA, [redacted]

46. Upon information and belief, CDK is seeking to recover approximately $90,000 from Brumos.

47. The Fields Auto Group has agreed to defend and indemnify Brumos with respect to CDK's claim.

G. CDK Improperly Uses Their Clients' Data

48. Recently, CDK has introduced a new initiative known as "SecurityFirst." According to CDK, "SecurityFirst is [CDK's] declaration that a comprehensive approach to

security is the best way to protect your brand, [CDK's] brand and the automotive industry as a whole." CDK claims that SecurityFirst addresses four security components: (1) industry education; (2) ongoing security initiatives; (3) its Third Party Access (3PA) Program; and (4) its Dealer Data Exchange (DDX).

49. In reality, the Third Party Access (3PA) Program and the Dealer Data Exchange (DDX) are revenue-producing services created by CDK, which use and/or rely on its customers' private data—with or without the customers' prior written consent.

50. Indeed, SecurityFirst is a systematic way for CDK to create revenue from its dealerships' private data.

51. Furthermore—as a consequence of CDK's revenue-generating services—CDK's customers, including the Fields Auto Group, are incurring additional costs from the third-party vendors who are forced to pay CDK to use these services.

H. Advent

52. In or about 2000, the Fields Auto Group began using a sales and financing and insurance ("F&I") product offered by Advent, a company based in San Pedro, California. Since that time, the Fields Auto Group has relied on the Advent system to handle all of their Florida dealerships' sales and F&I transactions, among other things. The Advent system augments CDK's DMS and is customized to the particular needs of the Fields Auto Group's dealerships.

53. For at the least the past 16 years, the Advent system has been a critical part of the Fields Auto Group's daily business operations in Florida. Indeed, the Advent system controls all of the functions in the dealerships' sales departments, including: (1) all vehicle management (stocking, tracking, vehicle get ready, cost, and repair order tracking); (2) desking tool (calculating discounts, financing, and leasing quotes); (3) finance (calculating all finance and

lease contracts, printing all documents and contracts to complete each and every sales transaction, tracking and reporting all customer and sales staff activities, profits, and commissions). Another key component of the Advent system is the capability to post information about the dealerships' sales and F&I transactions to CDK's DMS.

54. To achieve these results, the Fields Auto Group provided a secure user account to Advent, which permitted Advent to set up integration with CDK's DMS through a facility known as "User Programming."

55. For at least the past 16 years, CDK has licensed "User Programming" to the Fields Auto Group, which was designed to allow dealerships to connect CDK's DMS with necessary programs, such as Advent's system. Moreover, in the 2011 Addendum, [redacted]

56. Furthermore, the 2011 MSA also [redacted]

[redacted][2] (Emphasis added.)

[2] The Fields Auto Group has been integrating Advent's software with CDK's DMS for at least the past 16 years.

[redacted]

57. On April 7, 2016, the Fields Auto Group formally received a letter from CDK—addressed to all of its dealerships who rely on Advent's system—notifying the dealerships that CDK is planning to turn off integration between CDK's DMS and Advent's system starting April 29, 2016. The letter—entitled "**Notice of termination of Advent Resources from CDK Third-Party Access Program**"—provides:

> "We are providing you with this notice because your dealership has been identified as a client of Advent Resources. Advent Resources has been using a legacy access technology to integrate its application to the CDK DMS that required Advent to place its code on the CDK DMS. Advent's contract with CDK that allowed it to use the legacy access technology has terminated and, therefore, Advent's code is no longer allowed to reside on the CDK DMS.

> While we have worked to transition Advent to our approved and more secure, real-time, managed bi-directional technology available through our Third Party Access Program (3PA), efforts to reach agreement with Advent on this change have been unsuccessful thus far. ***Last spring***, we halted any new dealer integrations with Advent using legacy access technology and we must now take additional action to protect your DMS as part of our ongoing efforts to build a more secure ecosystem. ***Specifically, we will need to begin the process of removing Advent code on your DMS by Friday, April 29, 2016***."

(Emphasis added.)

58. Upon information and belief, CDK's decision to turn off Advent integration is based on Advent's refusal to pay CDK fees for integration and CDK's strategy to take over and monopolize the market for Advent's sales and F&I products. Turning off Advent integration, however, will have devastating effects on the Fields Auto Group's business, as the Advent software is crucial to the dealerships' daily operations. If Advent integration is turned off, the sales departments who rely on Advent would simply shut down until the Advent system is replaced.

59. Indeed, the immediate loss of a totally integrated Advent system (scheduled to occur on April 29, 2016) will completely shut down the Florida dealerships' sales departments and take away the Fields Auto Group's ability to close and finance sales, among other things. Losing the capability to sell and finance vehicles would be devastating to the Fields Auto Group's sales and finance operations, as well as to its reputation in the United States and its market share in Florida.

60. Advent integration is a critical component of the Fields Auto Group's business. The Fields Auto Group's relationships with its customers and employees is dependent in large part upon the Fields Auto Group's ability to quickly and accurately (1) manage its vehicles (stocking, tracking, vehicle get ready, cost, and repair order tracking); (2) calculate discounts,

financing, and leasing quotes; and (3) calculate all finance and lease contracts, generate all documents and contracts to complete each and every sales transaction, and track and report all customer and sales staff activities, profits, and commissions. If Advent integration is turned off, the Fields Auto Group will be unable to service its customers for at least nine months. The migration and testing process for a new sales and F&I product will take, at a minimum, nine months. The Fields Auto Group and its affiliates will need to install a new sales and F&I product in 19 locations, train 150 managers on the new product, and re-program every single form and contract used in the dealerships. Migrating from one software program to another is a long and tedious process. The Fields Auto Group cannot take the risk of moving its sales department to an untested and potentially unstable system.

61. On a ***daily*** basis, the Fields Auto Group and its affiliates rely on the Advent system to log approximately 2,000 new and used car inventory, costing, and tracking transactions. Additionally, ***each month***, the Fields Auto Group and its affiliates utilize the Advent system to process over 1,500 vehicle sales and to run thousands of reports.

62. There is also a business need for the Fields Auto Group to have Advent integration because of the data that can be accessed through Advent. Specifically, the Fields Auto Group, its customers, and its employees rely on the employees' continued use and access to historical sales, financing, insurance, and commissions data, which is stored using Advent integration. The Fields Auto Group needs this information to process current transactions for customers, employees, and the automobile manufacturers. The Fields Auto Group's use of and access to such data is dependent upon the Fields Auto Group having open access to Advent integration.

63. Additionally, the Fields Auto Group and its affiliates represent several brands, including Mercedes-Benz, BMW, Lamborghini, Bentley, Rolls-Royce, Land Rover, Volkswagen, Cadillac, Porsche, and Lexus. The Fields Auto Group's relationships with all of these automobile manufacturers (and others) will obviously be at significant risk if CDK is allowed to go through with turning off Advent integration. Indeed, if Advent integration is turned off in the next three weeks, the Fields Auto Group and its affiliates will be unable to process sales and financing transactions and manage and track its vehicles involving these automobile manufacturers. The Fields Auto Group's inability to sell and finance cars, track and report its salespeople's profits and commissions, and track and monitor its vehicles, places the Fields Auto Group's business relationships with all automobile manufacturers, as well as its entire reputation, at risk.

64. Upon further information and belief, CDK has caused other third-party providers—whose products are used in the Fields Auto Group's dealerships—to pay additional funds to continue to integrate with CDK's DMS. In fact, the Fields Auto Group has received letters from these third-party providers indicating that they have no choice but to pass on the fees levied by CDK to the dealerships.

I. CDK's Omissions

65. Upon information and belief, CDK has known about its plan to turn off Advent integration for at least the past year. It will take the Fields Auto Group and its affiliates at least nine months to switch 19 of its dealerships to a new sales and F&I product, which then integrates with CDK's DMS.

66. Additionally, since at least June 2015, CDK and the Fields Auto Group have been in ongoing discussions to enter into long-term renewals for the 2011 MSA, the 2011 Schedule,

the 2011 Addendum, and all other subsequent Schedules. Throughout those discussions, CDK ***never*** disclosed to the Fields Auto Group that it was planning to turn off Advent integration, which is a crucial component of its Florida dealerships' business. The Fields Auto Group has been negotiating with CDK in good faith and with the expectation that it could continue to use the Advent system—as it has done for at least the last 16 years.

67. More recently, CDK never disclosed its plan to turn off Advent integration during the Brumos negotiations. And the Brumos Schedule—signed by the Fields Auto Group on March 26, 2016—permits the Fields Auto Group to continue to use custom programs, such as Advent's system integration.

68. Had CDK disclosed that it was planning to turn off Advent integration at any time since June 2015, the Fields Auto Group would have switched over to a new DMS provider, which is a time-consuming and challenging process for a single dealership, let alone a dealership group with numerous locations.

FIRST CLAIM FOR RELIEF

(Declaratory Relief)

69. The Fields Auto Group restates and incorporates by reference each of the allegations of paragraphs 1 through 68 of this Complaint as though fully set forth herein.

70. In the 2011 Addendum, CDK agreed [redacted]

71. Pursuant to the 2011 Addendum, CDK promised that [redacted] (Emphasis added.)

72. In other words, [redacted]

73. CDK and the Fields Auto Group have entered into the Brumos Schedule for the Brumos dealerships, which were sold to the Fields Auto Group in the Brumos transaction.

74. Over the years, CDK and the Fields Auto Group have [redacted]

75. CDK, however, claims that Brumos owes CDK allegedly outstanding amounts under the Brumos MSA. The Fields Auto Group has agreed to defend and indemnify Brumos against CDK's claim.

76. A substantial, immediate, and real controversy therefore exists between the Fields Auto Group and CDK regarding whether Brumos owes allegedly outstanding amounts to CDK. A judicial declaration is necessary to determine the parties' respective rights.

77. The Fields Auto Group seeks a judgment declaring that [redacted] there are no amounts due and owing to CDK under the Brumos MSA.

SECOND CLAIM FOR RELIEF

(Breach of the 2011 Addendum)

78. The Fields Auto Group restates and incorporates by reference each of the allegations of paragraphs 1 through 77 of this Complaint as though fully set forth herein.

79. In the 2011 Addendum, CDK promised [redacted] (Emphasis added.)

80. In the 2011 Addendum, CDK also promised that it [redacted] (Emphasis added.)

81. As set forth above, [redacted]

82. The Fields Auto Group has incurred and continues to incur damages as a direct and proximate result of CDK's breaches in an amount to be proved at trial.

THIRD CLAIM FOR RELIEF

(Specific Performance)

83. The Fields Auto Group restates and incorporates by reference each of the allegations of paragraphs 1 through 82 of this Complaint as though fully set forth herein.

84. The 2011 MSA, the 2011 Schedule, the 2011 Addendum, and the subsequent Schedules are valid contracts that remain in full force and effect.

85. The 2011 Addendum [redacted]

86. The 2011 MSA also [redacted]

87. For at least the past 16 years, CDK has licensed "User Programming" to the Fields Auto Group, which was designed to allow dealerships to augment the CDK DMS by permitting either the dealership or a third-party vendor (*e.g.*, Advent) to create custom programming needed to enhance the dealership's business operations.

88. Additionally, the Fields Auto Group has been integrating Advent's software with CDK's DMS for at least the past 16 years.

89. Moreover, the 2011 MSA [redacted] (Emphasis added.)

90. Notwithstanding its contractual obligations to the Fields Auto Group and its affiliates, CDK intends to turn off Advent integration in all of the Fields Auto Group's dealerships, which use Advent's sales and F&I product. CDK has breached the 2011 Addendum and the 2011 MSA by refusing to acknowledge the Fields Auto Group's rights.

91. CDK [redacted] (which it is not), and three weeks' notice to the Fields Auto Group is not reasonable—especially when it will take at least nine months to switch 19 of the Fields Auto Group's and its affiliates' dealerships to a new sales and F&I product, which then integrates with CDK's DMS.

92. At this time, the Fields Auto Group has no adequate remedy at law for CDK's breach of its contractual obligations.

93. Accordingly, the Fields Auto Group is entitled to an order of specific performance ordering CDK to (i) license "User Programming" to the Fields Auto Group and its affiliates; and (ii) permit the Fields Auto Group and its affiliates to continue to use custom programs developed by the Fields Auto Group and contracted third-party vendors, such as Advent's system integration.

PRAYER FOR RELIEF

WHEREFORE, the Fields Auto Group respectfully requests entry of judgment as follows:

A. [redacted];

B. That there are no amounts due and owing to CDK under the Brumos MSA;

C. That CDK be ordered to pay compensatory damages in an amount to be proved at trial, together with pre-judgment interest at the maximum rate allowable by law;

D. That CDK be ordered to specifically perform its contractual obligation to (i) license "User Programming" to the Fields Auto Group and its affiliates, and (ii) permit the Fields Auto Group and its affiliates to continue to use custom programs developed by the Fields Auto Group and contracted third-party vendors, such as Advent's system integration;

E. That the Fields Auto Group be awarded its costs, disbursements, and any allowable attorney's fees incurred in connection with this case; and

F. That the Fields Auto Group be awarded such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

The Fields Auto Group hereby demands a jury trial on all issues.

DATED: April 18, 2016

HODGSON RUSS LLP

By /s/ Lauren C. Hojnacki

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